



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 14, 2012

VIA ELECTRONIC MAIL

Arlene A. Juracek, Acting Director
c/o Julie Musselman Oost
Illinois Power Agency
160 North LaSalle Street, Suite C-504
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Re: 2013 Draft Procurement Plan

Dear Director Juracek:

The People of the State of Illinois ("the People"), by and through Illinois Attorney General Lisa Madigan, hereby submit these comments on the 2013 Draft Procurement Plan ("Plan") released by the Illinois Power Agency ("IPA") on August 13, 2012.

City of Chicago Load-Switching

The Plan notes that "[o]ne of the key load switching/municipal aggregation risks between the two cases for ComEd is whether the City of Chicago passes its opt-out program referendum in November and its aggregated residential and small commercial customer load leaves ComEd supply before the 2013/2014 delivery year begins." Plan at 66. The IPA believes there is a high probability of Chicago shifting its load to an ARES and that it will occur prior to a Spring 2013 procurement event. Plan at 18, 19.

The People do not oppose excluding Chicago load in the ComEd Base Case forecast for the 2013/2014 planning. We also agree with the IPA that the projected over-supply for the 2013/2014 delivery year could be used as a hedge against the risk—acknowledged in the Plan—that the Chicago referendum fails to pass or that Chicago does not actually migrate out of the IPA portfolio by June 2013 (or at all). However, the People do make the modest suggestion of including in the Plan a statement of intent by the IPA to actively monitor the progress of the City of Chicago aggregation plans, in addition to reviewing the ComEd load forecasts, and modify the 2013/2014 procurement plan as necessary. If the City is willing to coordinate with the IPA on its progress and timing, this could provide greater clarity

to the IPA in planning for the best way to address projected over-supply issues and could potentially reduce costs to remaining ComEd customers that may result from the timing, amount, and method associated with shedding excess supply.

Although it is possible Chicago could move very quickly after a successful referendum to switch Chicago residents to ARES supply, it is equally likely that the process could take longer if there is a complicated bid process or if the City is considering the negotiation of energy efficiency or renewable energy components to a contract.¹ The City could also ultimately conclude that a shift in load may not be cost effective in light of the reduction in IPA charges expected upon the expiration of existing swap contracts in May 2013.² These variables point to the need for close coordination between the IPA and the City to the greatest extent possible.

Use of the Renewable Energy Resource Fund (RERF)

The People do not take a position on the IPA's possible use of the RERF to support existing long-term renewable energy contracts or on the IPA's belief that it does not need Commission approval to spend RERF funds. However, the People do support the suggestion of the Environmental Law & Policy Center ("ELPC") and others that the IPA use this Plan and future procurement plans as a vehicle for comprehensive renewable energy planning. To that end, the People appreciate the IPA's inclusion of the RERF issues in the draft Plan. Because the RERF is made up of funds collected from Illinois ratepayers, it is beneficial to have public transparency on the IPA's planning for how to utilize the fund. And discussing all renewable energy planning in one place better informs the public, market participants, and other interested parties and should produce better dialogue on the IPA's renewable energy efforts.

FutureGen 2.0

The Plan notes that a confidential benchmark must be developed in order for the FutureGen 2.0 project to be approved by the Commission as part of the procurement plan. Plan at 75. The Plan also notes that "[t]he IPA has engaged one of its Procurement Administrators, Levitan and Associates, to create a confidential benchmark" and that Levitan and Associates will submit a benchmark report for the project under confidential seal for approval by the Commission as part of the 2013 Procurement Plan Docket. *Id.*

¹ See, e.g., Hal Dardick and Julie Wernau, *Electrical Aggregation Question to Appear on November City Ballot*, CHICAGO TRIBUNE, June 27, 2012, available at <http://tinyurl.com/8ryc82v> ("Exactly how aggregation in Chicago would work in Chicago remains to be seen. The city could opt to look for a supplier that would build energy conservation and renewable energy sources into the contract. The administration could launch a bidding process, or choose a contractor on its own—although [Mayor] Emanuel's staff has said the mayor wants 'an open and competitive bid process.'").

² See, e.g., Hal Dardick and Julie Wernau, *Voters Will Decide on New Electricity Plan*, CHICAGO TRIBUNE, June 28, 2012, available at <http://tinyurl.com/8om719u> ("[Mayor] Emanuel said he was only worried now about getting the referendum measure passed and determining whether aggregation would lower homeowners' utility bills. 'My standard will be one standard—will this save homeowners money?' Emanuel said. 'And if it does, and I can see it through, we will then take the steps....'").

Although the People do not object to the inclusion of FutureGen in the Plan or to the use of confidential benchmarks, we do wish to ensure that ratepayers are not paying more than they need to for power from the project. The People suggest that the IPA amend its Plan to include additional discussion about how Levitan is developing the benchmark. The methodology Levitan uses to create the price point should be fair for a first-of-its-kind facility, fair to consumers, and reflect costs and market realities.³ The IPA should also verify that Levitan is consulting with Commission staff, IPA staff, and the procurement monitor in its benchmark-setting process as required by 20 ILCS 3855/1-75(d)(5).⁴

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Thank you again for your consideration of these comments.

Sincerely,



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³ According to the project's website: "FutureGen 2.0 is a first-of-its-kind, near-zero emissions coal-fueled power plant.... As it will be a first-of-its-kind facility, the FutureGen 2.0 CO2 storage site is expected to be the focus of global attention." <http://www.futuregenalliance.org/futuregen-2-0-project/>.

⁴ "The Agency and the Commission may approve any such utility sourcing agreements that do not exceed cost-based benchmarks developed by the procurement administrator, in consultation with the Commission staff, Agency staff and the procurement monitor, subject to Commission review and approval." 20 ILCS 3855/1-75(d)(5).